

BY EMAIL

August 25, 2014

Justice Michel Charbonneau
Ontario Superior Court of Justice
161 Elgin Street
Ottawa ON K2P 2K1

Your Honour:

Re: *St. Lewis v. Rancourt*
Court File No. 11-51657
Endorsement On Costs of the trial, dated August 21, 2014

1. I am in receipt of Your Honour's Endorsement On Costs ("Endorsement") dated August 21, 2104 (attached).
2. I respectfully ask that Your Honour reconsider the content of the Endorsement regarding the following matters.

Incorrect Endorsement statements about "proxy defence"

3. In paragraphs 11, 12, esp. 13, and 32(iv), the Endorsement text incorrectly conflates:
 - (a) the defence headed "Government entity and third party involvement Charter" from paragraphs 61 to 67 of the statement of defence (i.e., the "proxy defence" of abuse of process); with
 - (b) the abuse of process remedy based *inter alia* on an argued lack of actual damages — headed "No damages" in the statement of defence, referred to during the trial as the "Jameel defence", and contained in paragraphs 68 to 71 of the statement of defence.
4. Both "defences" are abuse of process remedies but the two are distinct in law and in factual basis, as was spelled out in the voir-dire facta and oral representations at-trial dealing with allowed defences.
5. Thus, the Endorsement statements in this regard are incorrect, and are prejudicial to the filed appeal in which the trial judge's summary denial of the "Jameel defence" — from the bench and during opening address to the jury — is a ground for appeal.

6. Therefore, I respectfully ask that the Endorsement text be changed to justly reflect the true situation regarding what actually was the issue when the defendant was judicially barred from presenting his “Jameel defence” during the opening address to the jury — there was no mention whatsoever of the *Charter* or of the “proxy defence” to the jury during the defendant’s opening address.

Judicial use of the cross-examination-on-affidavit without hearing both sides, and prior judicial determination of the defendant’s inability to pay costs

7. In paragraph-41, the Endorsement reads:

The defendant's evidence that he is impecunious is self-serving at best. At his cross-examination he failed to answer most questions put to him preventing any meaningful analysis of his allegation that he has absolutely no asset to pay any portion of the costs award. ...

8. Thus, the evidence from the July 18, 2014, cross-examination of me on my July 3, 2014, affidavit about my impecuniosity has been used in the determination of costs.
9. The plaintiff is the sole party who was allowed to make representations to the Court about the July 18, 2014, cross-examination, despite my written requests to Your Honour to be allowed to respond to the said plaintiff’s representations. My documented written requests to the Court were made by letters:
 - (a) dated July 30, 2014 (attached), received by Your Honour on July 31, 2014;
 - (b) dated August 1, 2014 (attached), received by Your Honour on August 1, 2014;
 - (c) dated August 20, 2014 (attached), received by Your Honour on August 20, 2014.
10. Paragraphs 1 and 5 of the Endorsement make it clear that my letters of July 30, 2014, August 1, 2014, and August 20, 2014, were not considered by the Court in making the costs determination.
11. In particular, this means that my completed answers to the July 18, 2014, cross-examination — that were sent to Mr. Dearden on July 20, 2014, and that were attached to my letter to the Court of July 30, 2014 — were not considered by the Court in making the costs determination. My completed answers include an August 26, 2011, affidavit and documents proving that in August 2011 I had been approved by Law Help Ontario on the basis of their approval criteria (impecuniosity).
12. In addition, the statement in the Endorsement (“The defendant's evidence that he is impecunious is self-serving at best.”) is incompatible with Your Honour’s own finding in oral Reasons at trial in the case, in the plaintiff’s motion for the permanent injunction in which impecuniosity was a live issue. Although a court transcript of the trial has not yet

been produced, my notes -- which are supplemented by the official court voice-recording of the trial obtained from Court Services -- accurately establish that, on June 6, 2014, Your Honour made the following finding of fact in the oral Reasons, given in open court, for the permanent injunction Order dated and entered June 6, 2014:

At approximately 12:28 PM, on June 6, 2014, in the oral Reasons:

Justice Charbonneau: “[...] The possibilities of payment of the costs or the compensation or the award -- the costs or the award of damages -- that the defendant suggests are exist (*sic*) are frankly pure fantasy, there is no reasonable prospect he will be able to pay. Moreover, [...]”

[Emphasis added.]

13. This finding of June 6, 2014, was also expressly stated in my letter of August 20, 2014, to Your Honour.
14. Therefore, I respectfully ask that the Endorsement wording about my impecuniosity be changed to justly reflect the above-described true facts, circumstances, and prior judicial finding.

De facto judicial finding of contempt of court without natural justice

15. In paragraph-44, the Endorsement reads:

... (3) the defendant reprehensible conduct of repeatedly publishing comments to prove that the trial was unfair and the judge partial while knowing perfectly well that the jury could read those comments and this could seriously prejudice the trial process. His comments were put on the record as (R) exhibits. In them not only did he attack the trial process and the administration of justice, he also continued to publish defamatory comments about the plaintiff.

16. In paragraph-17, the Endorsement reads:

... I am of the view that those regular publications during the trial were creating a substantial risk of prejudice to the plaintiff's case were they to come to the attention of the jury. There was also a real risk of a mistrial as a result of the defendant's conduct.

17. These statements are extended and unproven observations about intent, origin of documents, and level of risk to the jury, that amount to a *de facto* judicial finding of contempt of court against me, without the protections of due process and natural justice.

18. Such statements would on-their-own entirely disqualify Your Honour from presiding over a show cause hearing, and severely prejudice any motion for contempt made by the plaintiff.
19. That these statements amount to a *de facto* judicial finding of contempt is also shown by the plaintiff's counsel, Mr. Dearden, in his letter to the Trial Coordinator dated August 22, 2014, and forwarded to Your Honour on August 25, 2014 (attached), in which he states (in his paragraph-3):

In light of these (same) findings, please inform Justice Charbonneau that Professor St. Lewis will not be filing a motion for contempt of court regarding the Defendant's conduct during the trial proceedings.

20. Furthermore, the said extended statements in the Endorsement are difficult to reconcile with the facts known to the Court that:
 - (a) the Court never put the defendant on notice (for contempt) by any method whatsoever prior to the jury verdict;
 - (b) the Court told the *Citizen* reporter in open court that the reporter could interview the defendant on the matters later published and that the defendant could give any opinion he wanted;
 - (c) the plaintiff never requested that the Court put the defendant on notice prior to the jury verdict;
 - (d) the Court itself published the endorsement of a voir dire from the trial on CanLII prior to the jury verdict, containing detailed descriptions of defamatory meanings that were "not" put to the jury (2014 ONSC 3209); and
 - (e) both the Court and the plaintiff have entirely abandoned any process to properly prove contempt of court, whether by show cause or by a motion.
21. Therefore, I respectfully ask that the Endorsement statements be reduced to what is strictly and justly necessary for the costs question.

Endorsement statement about nature of defamation unjustly prejudicial

22. In paragraph-42 of the Endorsement, the text of the Endorsement reads:

... The defendant chose to defame her in the most aggressive and malicious fashion. ... [Emphasis added.]

23. Mr. Dearden also drew attention to this Endorsement statement in his August 22, 2014, letter to the Trial Coordinator, as a reason that he need not make a motion for contempt of court.

24. The said Endorsement statement “The defendant chose to defame her in the most aggressive and malicious fashion.” (emphasis added) is incompatible with the following facts known to the Court:
- (a) the jury did not award any punitive damages, despite vehement arguments that punitive damages should be awarded;
 - (b) the jury did not find that the malice was actual malice in publishing the defamatory stings, nor was this question of actual malice before it because the judge had instructed the jury that it was to not consider any defences;
 - (c) the jury’s finding of malice, therefore, can only be in relation to actions made (such as blogging about the case) after the defamatory stings were published, in relation to awarding aggravated damages.
25. Without punitive damages, it is a strict logical impossibility that the determined defamation was “in the most aggressive and malicious fashion”. Furthermore, Mr. Dearden’s letter to the Trial Coordinator shows how prejudicial such an endorsement statement is in the appeal.
26. I respectfully ask that the Endorsement statement in question be removed because:
- (a) it is a logical impossibility at odds with the jury’s verdict;
 - (b) it is not relevant to the determination of costs of the trial;
 - (c) it is prejudicial for the appeal.

Request for copies of all communications between plaintiff and judge during trial

27. Although a court transcript of the trial has not yet been produced, my notes -- which are accurately based on the official court voice-recording of the trial obtained from Court Services -- establish that, on June 2, 2014, at approximately 4:34 PM, the following was said in open court:

Mr. Dearden: Your Honour, just before you step down, umm, did you receive my ah suggested ah....?

Court: Ya, I’m taking into account all of your suggestion. And we will, you’ll find out what that consideration is. I appreciate that. I obviously, I have received them and I reviewed them and I consider them.

Mr. Dearden: Thank you Your Honour.

[Emphasis added.]

28. As the defendant, I was never cc'ed on this communication of "suggestions" from Mr. Dearden to the trial judge. This communication is also not present in the Registrar's file for the case.
29. As Your Honour has been made aware (cc of today's letter to Mr. Dearden), I have demanded of Mr. Dearden that he provide me with copies of all his communications with Your Honour. I fear that he will not comply. Therefore, I respectfully ask that Your Honour provide me with all the said communications, as these are needed for the appeal.

Yours truly,

A handwritten signature in blue ink that reads "Denis Rancourt". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dr. Denis Rancourt
(Defendant)
denis.rancourt@gmail.com

Cc: Richard Dearden, Counsel for the Plaintiff (by email)

Encl.

August 22, 2014

BY EMAIL AND HAND

Tina Johanson
Trial Coordinator
Ottawa Court House
161 Elgin Street, 5th Floor
Ottawa, ON K2P 2K1

Richard G Dearden
Direct 613-786-0135
Direct Fax 613-788-3430
richard.dearden@gowlings.com

Dear Ms. Johanson:

Re: St. Lewis v. Rancourt
Court File No.: 11-51657

1. Paragraph 50 of the attached *Endorsement on Costs*, 2014 ONSC 4840 of Justice Charbonneau states that Professor St. Lewis is to contact you if she wishes to schedule a motion for contempt of court against the Defendant.
2. Justice Charbonneau has made the following findings:
 - (i) [17] Subsequently, Mr. Rancourt on almost a daily basis published or caused to publish statements which outlined the various decisions made in the absence of the jury. He essentially proceeded to plead his case in the media and on-line. He explained why he was not getting a fair trial and had left the courtroom. **I am of the view that those regular publications during the trial were creating a substantial risk of prejudice to the plaintiff's case were they to come to the attention of the jury. There was also a real risk of a mistrial as a result of the defendant's conduct.**
 - (ii) [42] ... The defendant chose to defame her in the most aggressive and malicious fashion. There is no Charter principle or other democratic legal rules in Canada which permit such severe attacks on a person's reputation and integrity...
 - (iii) [44] I find that the plaintiff is entitled to an award on the scale of substantial indemnity. It is justified on the basis of ... (3) **the defendant's reprehensible conduct of repeatedly publishing comments to prove that the trial was unfair and the judge partial while knowing perfectly well that the jury could read those comments and this could seriously prejudice the trial process. His comments were put on the record as (R) exhibits. In them not only did he attack the trial process and the administration of justice, he also continued to publish defamatory comments about the plaintiff.**

3. In light of these findings, please inform Justice Charbonneau that Professor St. Lewis will not be filing a motion for contempt of court regarding the Defendant's conduct during the trial proceedings.

Yours truly,

A handwritten signature in cursive script that reads "Richard G. Dearden".

Richard G Dearden

RGD:md

Encl.

cc: Denis Rancourt

OTT_LAW\4584291\1

CITATION: Joanne St. Lewis v. Denis Rancourt, 2014 ONSC 4840

COURT FILE NO.: 11-51657

DATE: 2014/08/21

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Joanne St. Lewis, Plaintiff

AND

Denis Rancourt, Defendant

BEFORE: The Honourable Justice M.Z. Charbonneau

COUNSEL: Richard G. Dearden for Joanne St. Lewis

Denis Rancourt, Self-represented

HEARD: Written Submissions

ENDORSEMENT ON COSTS

[1] I have now had the occasion of reviewing the submissions of both parties on the issue of costs. They consist of the following documents:

- a) Cost submissions of the plaintiffs filed on June 25, 2014
- b) Response submission of the defendant filed July 4, 2014
- c) Reply of the plaintiff filed on August 1, 2014

[2] When the defendant delivered his response he included an affidavit affirmed on July 3, 2014. The affidavit was filed in support of his submission that he is impecunious.

[3] Plaintiff's counsel proceeded to cross-examine the defendant on his affidavit on July 15, 2014. He filed with his reply submissions the transcript of the cross-examination and a book of exhibits referred to during the cross-examination.

[4] On receipt of the plaintiff's reply submissions, the defendant sought leave to file what he called a "sur reply" to the plaintiff's reply.

[5] I decided to review all material before deciding whether a “sur reply” should be allowed. For the reasons set below, I have decided that a sur-reply is neither warranted nor necessary to fairly and properly decide the issue of costs.

The nature of the proceedings

[6] The plaintiff brought a defamation action against the defendant. She sought general, aggravated and punitive damages. She also sought an injunction requiring the defendant to take down the defamatory words published by the defendant in his blogs and requiring him to cease and desist from repeating the defamatory words in the future.

[7] This was a jury trial. The trial lasted 15 days.

[8] After deliberating for approximately 1.5 day, the jury awarded the plaintiff damages of \$350,000 which included general damages of \$100,000 and aggravated damages of \$250,000. The jury found that the defendant acted maliciously. In relation to the defendant’s assertion that the plaintiff had acted as “Allan Rock’s house negro”, the jury found that those words would be understood by members of black Canadian community that she was a traitor and a pariah to the black community.

[9] I then proceeded to hear submissions on the claim for injunctive relief. I granted all the relief sought by the plaintiff.

[10] As part of the preliminary motions, I heard a motion by the defendant that I recuse myself. I dismissed his motion and gave oral reasons for that decision.

[11] I also heard a motion to determine whether the defence of “claim by proxy” would be left with the jury. That defence headed “Government entity and third party involvement Charter” was set out in paragraphs 61 to 67 of the statement of defense. The defendant alleged that the action should be dismissed because it was improperly funded by government funds, was inconsistent with the defendant’s right to free speech under section 2 (b) of the Canadian Charter

of Rights and Freedoms. He submitted the action prevented a proper balance on individuals' protection against defamation and free speech criticism provided by the Charter and was intended to silence the defendant regarding matters of public interest and as such was an abuse of process.

[12] I ruled that this defence could not be left with the jury. The main reason for my decision was that the defendant had raised the same issues in a preliminary champerty motion that had been dismissed by this court. An appeal from that dismissal had been dismissed by the Court of Appeal. The Supreme Court of Canada had refused the defendant's motion for leave to appeal.

[13] In his opening address to the jury, the defendant started telling the jury that he would be asking them to dismiss the action on the basis of abuse of process. I interrupted him and after the jury was excused, I reminded him of my ruling concerning his abuse of process defence and told him that he could not raise it with the jury.

[14] On the morning of the 5th day of trial, before the jury was called into the courtroom, the defendant read a prepared statement to the effect that he could not get a fair hearing before me and therefore he would not participate any further in the trial. He left the courtroom. He only returned to hear the jury verdict. At his request, and over the objection of plaintiff's counsel, I allowed him to participate in the injunction phase of the trial.

[15] I also note that after the defendant decided not to participate in the trial, several of his witnesses appeared before the court to ask to give evidence on behalf of the defendant. I dismissed their request explaining that they could not testify in view of the defendant's decision to voluntarily end all participation in the proceedings.

[16] The defendant sent a letter to RSJ MacNammara asking him to see that his witnesses be allowed to testify. I read that letter in open court and filed it as exhibit R-1. I explained once again that the defence witnesses could not be heard in the absence of the defendant. At one point one of those witnesses asked that I reconsider my decision. The witnesses remained in the courtroom throughout the trial.

[17] Subsequently, Mr. Rancourt on almost a daily basis published or caused to publish statements which outlined the various decisions made in the absence of the jury. He essentially proceeded to plead his case in the media and on-line. He explained why he was not getting a fair trial and had left the courtroom. I am of the view that those regular publications during the trial were creating a substantial risk of prejudice to the plaintiff's case were they to come to the attention of the jury. There was also a real risk of a mistrial as a result of the defendant's conduct.

[18] During the submissions on the injunction phase of the trial, the plaintiff's counsel moved that the defendant be found in contempt. I have fixed September 25th, 2014 for the contempt hearing. I will have more to say about the contempt proceedings later.

The plaintiff's position

[19] The plaintiff asks the court to award her costs on a substantial indemnity scale fixed in the amount of \$552,706.56 for fees and \$55,305.97 for disbursements plus the applicable 13% harmonized sales tax.

The defendant's position

[20] As part of his submissions on costs, the defendant moves that I recuse myself from determining the costs.

[21] He also moves that certain paragraphs of the plaintiff's costs outline be struck out as irrelevant and intended solely to be prejudicial.

[22] He submits that the trial was an exceptionally simple defamation case and success was divided.

[23] He submits that the amounts claimed are excessive for what was a simple unopposed trial.

[24] He submits that no costs be awarded to the plaintiff on the grounds that:

- a) there is no reason to indemnify the plaintiff since the University is paying her legal fees;
- b) an award of costs would be contrary to the Charter principle of freedom of expression;
- c) an award would prevent the defendant from having access to an appeal.

ANALYSIS

The Recusal Motion

[25] This issue has already been determined. The defendant has raised it as one of his grounds of appeal to the Court of Appeal. The Court of Appeal will decide the issue at the relevant time. There is therefore no validity in raising this issue again at this stage.

The motion to strike certain paragraphs of the plaintiff's costs outline

[26] The submissions in a cost outline are simply that: "submissions". Mr. Rancourt seems to want the court to treat them as pleadings. He has forcefully submitted contrary submissions. The court considers all the submissions of both parties and determines which are persuasive and which are not. The submissions are an attempt to convince the court how the court should approach the issue of costs particularly in light of the factors set out in Rule 57. Any submission may or may not ultimately be accepted by the court. The submissions of the plaintiff are framed on that basis and are therefore relevant even if the defendant does not agree with them.

The guiding principles in awarding costs

[27] Section 131(1) of the Courts of Justice Act gives the court the discretion to determine by whom and to what extent costs shall be paid.

[28] Rule 57.01 sets forth the factors to be considered by the court in exercising its discretion.

[29] An award of costs has fundamentally two purposes. The primary purpose is to indemnify the successful party; secondarily, costs will also serve to deter wasteful and unreasonable conduct by litigants.

[30] The amounts of the cost award should be a fair and a reasonable amount that the unsuccessful party should pay, having regard to the factors in Rule 57.01 (3), see Boucher V. Public Accounts Council [2004], 71 O.R.(3d) 291 (C.A.).

RULE 57.01

[31] The rule emphasises that the court should first consider the result in the proceeding, any offer to settle, the principle of indemnity and the amount of costs that an unsuccessful party could reasonably expect to pay. The rule then provides that the court may consider a list of some 13 other factors.

a) The result of the Proceedings

[32] The defendant does not concede that the plaintiff was substantially successful at trial. Rather he submits that success was divided for the following reasons:

- i) The plaintiff claimed general damages of \$500,000, aggravated damages of \$250,000 and punitive damages of \$250,000 while the jury only awarded general damages of \$100,000, aggravated damages of \$250,000 and no punitive damages.
- ii) Only 33 of the 55 defamatory meanings claimed were found to be capable of defamatory meaning.
- iii) The jury only found 20 of the 33 remaining defamatory meaning defamatory.
- iv) The plaintiff was not totally successful in the preliminary motions because the defence of litigation by proxy was not completely “struck out” and also the plaintiff was not allowed by the Court to simply put before the jury a list of all motions and appeals as evidence of malice but would have to rely on specific information of why any one of them was probative of malice.

- v) Upon the defendant deciding to show up for the injunction phase of the trial, the court ordered plaintiff's counsel to provide the defendant with a copy of the plaintiff's factum submitted for the injunction phase of the trial.
- vi) The defendant won access to language interpretation for the public with the help of the Citizen.

[33] I do not accept that any of the points raised by the defendant support a finding that success was divided. The defendant's submissions on this issue border on the irrational. The substantial success of the plaintiff is clearly demonstrated by the large amount of damages awarded, the finding by the jury that the defendant acted maliciously and the total injunctive relief being granted. His unreasonable position on the results of the proceedings illustrates his unreasonable practice throughout of disputing everything at each and every step of the way.

b) Offers to settle

[34] The record does not indicate any offer to settle.

c) The principle of indemnity

[35] The plaintiff was successful. I fail to see any legitimate reason why she should not be entitled to damages.

[36] The only question to be determined is whether she should be partially or substantially indemnified.

[37] The defendant submits the plaintiff should not be indemnified for the following reasons:

- i) The plaintiff's actions needlessly lengthened the trial.
- ii) The costs award would be contrary to the policy principles governing costs since the plaintiff has no need for indemnification.
- iii) A court should not make an order that cannot be enforced. Here there is evidence the defendant is impecunious and will never be able to pay the award.
- iv) The plaintiff would obtain double recovery as there is no evidence the plaintiff will remit any recovered costs to the University of Ottawa.
- v) The awarding of costs would be unfair and go against the Charter principle of freedom of expression. The action was tantamount to the use of public funds by a government institution to silence criticism of the institution.

[38] I reject all the defendant's contentions.

[39] First of all, most of these submissions have already been addressed and rejected by the court when substantial costs awards were made against the defendant at every interlocutory step preceding the trial. There is no reason to come to a different conclusion now. The Court of Appeal and the Supreme Court of Canada also awarded costs against the defendant when dismissing the defendant's appeals. The outstanding costs orders now total over \$250,000.

[40] Contrary to what the defendant alleges, it is the defendant who needlessly lengthened the trial by disputing every claim of the plaintiff and pleading a number of untenable defences and then abandoning them in the course of the trial. His submissions on costs are a continued illustration of his unreasonable tactics.

[41] The defendant's evidence that he is impecunious is self-serving at best. At his cross-examination he failed to answer most questions put to him preventing any meaningful analysis of his allegation that he has absolutely no asset to pay any portion of the costs award. The defendant's argument that there should be no costs because he is impecunious has been dismissed many times at the interlocutory stages of the proceedings. He insists on making the same argument again, thereby substantially increasing the plaintiff's legal fees and disbursements. The fact a party is impecunious is not a reason to deny costs to the successful party: see Myers V. Toronto (Metropolitan) Police Force [1995] OJ No. 1321(Ont Div Ct).

[42] This was not an action between the defendant and the University of Ottawa. The parties in this action are the plaintiff, an individual who had nothing to do with the ongoing dispute between the defendant and the University of Ottawa, and the defendant. The defendant chose to defame her in the most aggressive and malicious fashion. There is no Charter principle or other democratic legal rules in Canada which permit such severe attacks on a person's reputation and integrity. During oral submissions the defendant conceded that the University is not a government institution nor was the University implementing a government policy. The Charter has no application here: see Lobo V. Carlton University [2012] ONCA 498.

[43] The double recovery argument made by the defendant is unfounded. There is absolutely no reason in fact nor in law to support an inference that the plaintiff would not remit the costs award to the University.

[44] I find that the plaintiff is entitled to an award on the scale of substantial indemnity. It is justified on the basis of (1) the unreasonable conduct of the plaintiff throughout the proceedings which lengthened and forced the plaintiff to answer a multiplicity of frivolous arguments and wasted the court's time, (2) the unreasonable conduct of the defendant abandoning his defence and his witnesses in the course of the trial thus creating a number of unnecessary distractions during the remaining portion of the trial, (3) the defendant reprehensible conduct of repeatedly publishing comments to prove that the trial was unfair and the judge partial while knowing perfectly well that the jury could read those comments and this could seriously prejudice the trial process. His comments were put on the record as (R) exhibits. In them not only did he attack the trial process and the administration of justice, he also continued to publish defamatory comments about the plaintiff.

d) **The amount of costs the defendant could reasonably expect to pay**

[45] The defendant knew the plaintiff's counsel was a very experienced trial lawyer. The rates Mr. Dearden is claiming for himself and others are reasonable in the circumstances and the defendant knew what they would be. He already had been ordered to pay very substantial amounts of costs. In deciding to make this case overly complex and time consuming to defend, the defendant knew the ultimate claim for costs would be very substantial. He cannot complain now that it is very substantial.

[46] His decision to walk out during the trial itself may have decrease the number of days of trial. However, all the preparation had already been done. His continued on-line comments forced plaintiff's counsel to spend additional time monitoring them and making submissions to the court. The defendant who had individuals monitoring the trial full time had to know the unnecessary disruptions his letters and on-line publications were creating.

The Contempt Hearing

[47] At one point I was asked by one of the defendant's close colleagues whether he could publish certain statements made in court in the absence of the jury. I told him that it was unlawful to publish anything said in the absence of the jury. Although this is the law in criminal proceedings it would appear this is not necessarily the case in civil proceedings.

[48] As indicated earlier, when submissions were made during the injunction phase of the trial, Mr. Dearden asked that Mr. Rancourt be held in contempt for his on-line comments during the course of the jury trial. I fixed September 25th 2014 to hold a contempt hearing for Mr. Rancourt to show cause why he should not be found in contempt.

[49] I am of the opinion upon further review of the law that a formal order prohibiting the defendant from publishing his comments during the course may be necessary for a finding of contempt. No formal prohibition order was sought by the plaintiff and none was made.

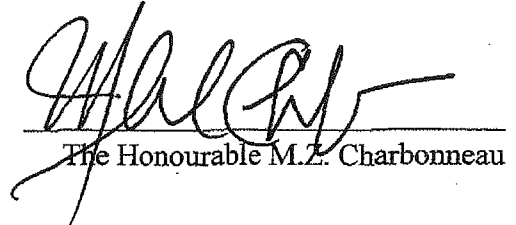
[50] I am therefore cancelling the contempt hearing set for September 25th, 2014. If the plaintiff disagrees with my tentative view, the plaintiff may, within 20 days, bring a motion for contempt at a convenient date to be set by the trial coordinator after discussion with both parties. This will provide a procedural framework for the hearing which is not available at this time.

[51] **Quantum of Costs**

For all of the above reasons, I find the plaintiff is entitled to be substantially indemnified. I find that none of the time spent on the interlocutory motions, where costs have already been attributed, is included in the plaintiff's costs outline. I find the overall claim somewhat excessive. In keeping with the rules and principles noted above and in particular all the factors

set out in Rule 57(1), I find a fair and reasonable award in all the circumstances to be \$444,895.00 including disbursements and taxes.

Date: August 21, 2014



The Honourable M.Z. Charbonneau

CITATION: Joanne St. Lewis v. Denis Rancourt, 2014 ONSC 4840

ONTARIO
SUPERIOR COURT OF JUSTICE

RE: Joanne St. Lewis, Plaintiff

AND

Denis Rancourt, Defendant

BEFORE: The Honourable Justice M.Z.
Charbonneau

COUNSEL: Richard G. Dearden for Joanne St. Lewis
Denis Rancourt, Self-represented

ENDORSEMENT

M.Z. Charbonneau, Judge

Released: August 21, 2014

BY EMAIL

July 30, 2014

Justice Michel Charbonneau
Ontario Superior Court of Justice
161 Elgin Street
Ottawa ON K2P 2K1

Your Honour:

Re: *St. Lewis v. Rancourt*
Court File No. 11-51657
Costs of the trial in the action

1. It is trite law that my impecuniosity is relevant to the costs determination that is before the Court. Mr. Dearden did not cross-examine me for more than 3 hours on July 18, 2014, about my impecuniosity because it is not relevant. Now he dislikes the result of that cross-examination and is attempting to deprive the Court of the important answers with exhibits that resulted from the said cross-examination.
2. On July 21, 2014, the Trial Coordinator informed me that Your Honour received the cc-copy of my letter of July 20, 2014, to Mr. Dearden (attached). In the said letter to Mr. Dearden, I state at paragraph-9:

During the July 18, 2014 cross-examination of me you frequently asked the same questions more than once. I advise you to not choose only the briefest or most convenient partial answers to your repeated questions, in making your reply submissions. I advise you that if you do this, or if I believe that you are not fairly representing the events of the July 18, 2014 cross-examination, **then I will make a request to Justice Charbonneau to make a sur-reply.**

[Underline-emphasis in original.]

3. Mr. Dearden's "Reply" (dated July 30, 2014, and served on me this afternoon) is 106 pages with his arguments regarding his 3-hour cross-examination of me held on July 18, 2014, on my affidavit affirmed on July 3, 2014. The transcript of the said cross-examination was filed with the Court by Mr. Dearden and is 178 pages.

4. I ask to be allowed a "sur-reply" to Mr. Dearden's "Reply" because Mr. Dearden's "Reply" is the first and only submission to the Court about the said cross-examination of July 18, 2014. I must be allowed to respond, and to file the relevant exhibits-at-cross-examination and the July 20, 2014 answers that Mr. Dearden has failed to include.
5. I respectfully request 10 days to prepare the materials and respond (Mr. Dearden has had since my Response of July 4, 2014).
6. Mr. Dearden has failed to fairly represent my answers and has failed to include any of the many exhibits at cross-examination that are several bank/Visa/GIC/PayPal formal documents that prove all the financial affirmations in my affidavit of July 3, 2014. I wish these exhibits to be filed with the Court, with my response.
7. Mr. Dearden also failed to include my completed answers contained in my letter to him of July 20, 2014 (attached, including an affidavit and exhibits), which prove that I was approved for Law Help Ontario for financial aid in 2011.

Yours truly,



Dr. Denis Rancourt
(Defendant)
denis.rancourt@gmail.com

Cc: Richard Dearden, Counsel for the Plaintiff (by email)

BY EMAIL

July 20, 2014

Richard Dearden
Gowlings LLP
2600 – 160 Elgin Street
Ottawa, ON
K1P 1C3

Dear Mr. Dearden:

**Re: *St. Lewis v. Rancourt*, Court File No. 11-51657,
 Friday July 18, 2014, out-of-court cross-examination**

You cross-examined me during more than 3 hours on Friday July 18, 2014, about my 3-page affidavit affirmed by me on July 3, 2014, in support of my July 4, 2014 submissions regarding the costs of the trial in the action. I wish to complete my answers to some of your questions at the cross-examination, as follows, and to advise you about the matter.

1. I reaffirm that many of your questions were not relevant to any matter in issue in the instant proceeding of the costs determination for the trial in the action. The only purpose of my July 3, 2014 affidavit is to prove that I am impecunious, as a relevant consideration in the said costs determination.
2. Thus all the collateral questions that you raised at the cross-examination:
 - (a) my monthly bank statements dating back to 2011;
 - (b) the sources of any moneys to pay for costs orders, court fees, and transcripts since 2011;
 - (c) whether, in 2011, I could afford a hypothetical mediation process with an expensive mediator chosen by you;
 - (d) all the transactions in my VISA and PayPal accounts;
 - (e) and so on;

constitute fishing expeditions that may be relevant to your allegations of fraudulent conveyance or relevant to enforcement of costs orders and so on, but that are not relevant to the only question in issue, which is my impecuniosity.

3. You questioned why I had not produced documents by July 15, 2014, as demanded in your July 8, 2014 Notice of Examination. In addition to the answer that I gave, I draw your attention to Rule 34.10(3) of the *Rules of Civil Procedure*:

Notice or Summons May Require Documents and Things

(3) Unless the court orders otherwise, the notice of examination or summons to witness may require the person to be examined to bring to the examination and produce for inspection,

(a) all documents and things relevant to any matter in issue in the proceeding that are in his or her possession, control or power and are not privileged; or

(b) such documents or things described in clause (a) as are specified in the notice or summons. [Emphasis added.]

Irrelevant questions about the August 25, 2011 affidavit

4. You asked me several questions about an affidavit I affirmed on August 25, 2011, which was in support of my response to your motion of August 18, 2011 to force me to accept a mediator of your choice. You insisted on the record during the July 18, 2014 cross-examination that you were entering the said affidavit as Exhibit 16. On July 18, 2014, your office (Ms. Semenova) then sent me emails — with attached PDF files — purporting to attach all the exhibits at cross-examination. However, the PDF file of Exhibit 16 is incomplete, as it contains solely affidavit-exhibit “D” out of the eleven (11) affidavit-exhibits numbered “A” to “K”. The page numbering proves that the said PDF file contains only part of Exhibit 16. I advise you that I do not consent to your filing only part of Exhibit 16. I demand that if you file Exhibit 16 with the Court, it must be filed in its entirety.
5. Furthermore, in your questions about Exhibit 16 (my affidavit of August 25, 2011), you failed to mention that a second affidavit affirmed by me on the next day (August 26, 2011) was additionally filed, in the same August 18, 2011 motion, for the purpose of completing the evidence about my then difficulty to afford mediation. Thus, in my answer (given under objection of relevance) to your July 18, 2014 questions about paragraph-16 of the August 25, 2011 affidavit, about my not being able to afford a hypothetical mediation process with the expensive mediator that you sought to impose on me in 2011, I wish to add my affidavit affirmed by me on August 26, 2011 (attached), which was served on you with my motion record of August 2011.
6. Paragraphs 5 to 10 of the attached August 25, 2011 affidavit, and the two affidavit-exhibits “AA” and “BB”, establish that on August 25, 2011, I was accepted by Law Help Ontario for help with mediation costs, on the basis of its acceptance criteria.
7. Nonetheless, I continue to object and to maintain that all your questions about my inability to afford an expensive proposed mediation in 2011 are not relevant to the only relevant question that is my impecuniosity to pay the huge costs-for-trial that you seek.

Questions about my impecuniosity

8. In answering your July 18, 2014 questioning of my impecuniosity, I wish to add that the question of my impecuniosity is in the context to the following circumstances, in terms of quanta: unpaid costs on motions and appeals of approximately \$258,000.; unpaid ordered damages of \$350,000 plus interest; and your excessive costs claim (partial indemnity) of \$494,298.38; for a total of some **\$1,102,000**. Your even more excessive substantial indemnity claim of \$694,453.60 brings this to **\$1,302,000**. Meanwhile I have given you full disclosure about my impecuniosity, in terms of all my accounts and assets.

Many repeated questions

9. During the July 18, 2014 cross-examination of me you frequently asked the same questions more than once. I advise you to not choose only the briefest or most convenient partial answers to your repeated questions, in making your reply submissions. I advise you that if you do this, or if I believe that you are not fairly representing the events of the July 18, 2014 cross-examination, then I will make a request to Justice Charbonneau to make a sur-reply.

Requirement that you file the entire cross-examination transcript

10. In this regard, I advise you that, pursuant to Rule 34.18(3) of the *Rules of Civil Procedure*, I do not consent to your filing solely a copy of a portion of the transcript. If you rely on any part of the transcript of the July 18, 2014 cross-examination, then I demand that you file the entire transcript with the Court, to Justice Charbonneau.

Yours truly,



Dr. Denis Rancourt
(Defendant)
Email: denis.rancourt@gmail.com

Attached: August 26, 2011 affidavit of Denis Rancourt
Cc: Justice Charbonneau, via the Trial Coordinator (by email)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

AFFIDAVIT

I, **Denis Rancourt**, of the City of OTTAWA, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

Purpose of the instant (second) affidavit of Denis Rancourt

1. The instant affidavit is about mediation in the action and about my status with Law Help Ontario, a Pro Bono Law Ontario Project – for response to a Plaintiff's Motion intended to be heard initially on September 2, 2011.
2. The instant affidavit is a second affidavit by me as deponent for response to the Plaintiff's Motion intended to be heard initially on September 2, 2011.

About the deponent

3. I am the defendant in the action. I am self-represented. I am not a lawyer.
4. I was a university professor in physics for twenty three years and attained the highest rank of tenured Full Professor in 1996. My 2009 dismissal case is presently in hearing before binding labour arbitration with unanimous support from my union. The Canadian Association of University Teachers (CAUT) is in mid independent enquiry into the breaches of my academic freedom since 2005, including the dismissal. The dismissal was reported in the national and North American media and is considered a

major academic freedom case. I won a significant first labour arbitration award in 2008, reviewed in a law journal, and past settlements have included letters of apology or explanation from the University of Ottawa.

Defendant cannot afford plaintiff-imposed mediator of Mandatory Mediation

5. Attached as exhibit "AA" is a copy of the Notice of Requirement to Mediate for the instant action. It states that the first defence was filed on "12-JUL-2011".
6. Following a written application made in due form, on August 25, 2011, at 11:45am, Mr. Ayoub Cherkaoui, Litigation Projects Coordinator, Law Help Ontario, 5th floor, 161 Elgin Street, Ottawa, Ontario, confirmed to me in person that my application to Law Help Ontario was approved and that I am now registered and accepted to receive the services of Law Help Ontario. Mr. Cherkaoui further stated to me in person that he had the authority to make this approval and that the application was approved by him.
7. Acceptance into the Law Help Ontario program is based on financial need, based on income.
8. Law Help Ontario does not provide representation but rather provides legal help on questions arising in a given litigation; the instant action in this case.
9. In our August 25, 2011, meeting Mr. Ayoub Cherkaoui explained that I qualified for the new "Mediation Assistance Project", a Pro Bono Law Ontario project also managed by his office.
10. Attached as exhibit "BB" is a copy of my August 25, 2011, signed application to the Mediation Assistance Project of Pro Bono Law Ontario. The application contains an example letter sent to the other side to invite voluntary participation in mediation provided free of cost under the purview of the Mediation Assistance Project.
11. I understand that such an invitation will be sent to the Plaintiff as soon as possible.

Sworn and affirmed before me at the City of
Ottawa, Ontario, on

August 26, 2011



Commissioner for Taking Affidavits
(or as may be)

Michelle Antoinette Hannah, a Commissioner, etc.,
City of Ottawa, for the Government of Ontario,
Ministry of the Attorney General.
Expires August 21, 2013.
Michelle Antoinette Hannah, un commissaire, etc.,
ville d'Ottawa, au service du gouvernement de
l'Ontario, Ministère du Procureur Général.
Second affidavit of Denis Rancourt
Expiration: le 21 août 2013.



(Signature of deponent)
Denis Rancourt

RCP-E 4D (July 1, 2007)

THIS IS EXHIBIT " **AA** "

OF THE AFFIDAVIT

OF **Denis Rancourt**

SWORN BEFORE ME THIS **August 26, 2011**

nathannah

Commissioner for Taking Affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

BETWEEN:
ENTRE:

JOANNE ST.LEWIS

Plaintiff
Demandeur

and / et

DENIS RANCOURT

Defendant
Défendeur

AA

NOTICE OF REQUIREMENT TO MEDIATE
AVIS DE MÉDIATION OBLIGATOIRE

Pursuant to Rule 24.1.09(1), the parties to this proceeding are required to attend a mediation session within 180 days after the first defence has been filed, unless the court orders otherwise. The first defence was filed on
Conformément à la règle 24.1.09(1), les parties à l'instance sont tenues d'assister à une séance de médiation dans les 180 jours qui suivent le dépôt de la première défense, sauf ordonnance contraire du tribunal. La première défense a été déposée le

12-JUL-2011

(Date)

To prevent the assignment of mediator, the parties to this proceeding are required to file Notice of Name of Mediator and Date of Session (Form 24.1(A)) with the court within 180 days after the filing of the first defence.

Afin d'éviter qu'un médiateur soit affecté au dossier, les parties à cette instance sont tenues de déposer un avis du nom du médiateur et de la date de la séance (formule 24.1(A)) auprès du tribunal, dans les 180 jours qui suivent le dépôt de la première défense.

The parties may select a mediator from the approved list of mediators, or on consent may select a mediator who is not named on the list. The list is available on the Ministry of the Attorney General website at www.attorneygeneral.jus.gov.on.ca.

Les parties peuvent choisir un médiateur sur la liste des médiateurs approuvés ou elles peuvent consentir à choisir un médiateur qui ne figure pas sur cette liste. La liste est consultable sur le site Web du ministère du Procureur général, à www.attorneygeneral.jus.gov.on.ca.

If the mediation co-ordinator does not, within 180 days from the date of this notice, receive a consent or an order extending the time for the completion of a mediation session, a Form 24.1A notice, a mediator's report or a notice that the action has been settled, he or she shall immediately assign a mediator from the list who will fix a place, date and time for the mediation session and notify the parties at least 20 days before that date.

Si le coordonnateur de la médiation ne reçoit pas, dans les 180 jours qui suivent la date du présent avis, une ordonnance prolongeant le délai prescrit pour la tenue d'une séance de médiation, un avis sur la formule 24.1A, le rapport du médiateur ou un avis de règlement de l'action, il désignera immédiatement un médiateur dont le nom figure sur la liste qui fixera les date, heure et lieu de la séance de médiation et en avisera les parties au moins 20 jours avant cette date.

The date fixed for the mediation session shall be within 90 days after the appointment of the mediator unless the court orders otherwise.

La médiation doit avoir lieu dans les 90 jours qui suivent la nomination du médiateur sous réserve d'une ordonnance contraire du tribunal.

**NOTICE OF REQUIREMENT TO MEDIATE
AVIS DE MÉDIATION OBLIGATOIRE**

CV-11-00051657-0000

Court File No. / No du dossier de greffe

Please notify the Mediation Office immediately in writing if this proceeding:

Veillez aviser immédiatement le Bureau de la médiation, par écrit, si l'instance répond à l'un ou l'autre des critères suivants :

- (a) is an action to which Rule 75.1 (Mandatory Mediation – Estates, Trusts and Substitute Decisions) applies;
elle est une action à laquelle la Règle 75.1 s'applique (médiation obligatoire – successions, fiducies et décisions au nom d'autrui);
- (b) is in relation to a matter that was the subject of a mediation under section 258.6 of the Insurance Act, and the mediation was conducted less than a year before the delivery of the first defence, as such actions are exempt from Rule 24.1;
elle se rapporte à une affaire qui fait l'objet d'une médiation en vertu de l'article 258.6 de la Loi sur les assurances et si la médiation a eu lieu moins d'une année avant le dépôt de la première défense, auquel cas ces actions sont exemptées de la règle 24.1;
- (c) is an action placed on the Commercial List;
elle est une action inscrite au rôle commercial;
- (d) is an action under Rule 64 (Mortgage Actions);
elle est une action relevant de la Règle 64 (actions hypothécaires);
- (e) is an action under the Construction Lien Act, except a trust claim;
elle est une action en vertu de la Loi sur le privilège dans l'industrie de la construction, sauf une action relative à la fiducie;
- (f) is an action under the Bankruptcy and Insolvency Act (Canada);
elle est une action en vertu de la Loi sur la faillite et l'insolvabilité (Canada);
- (g) is an action that has been certified as a Class Proceeding under the Class Proceedings Act 1992; or
elle est une action qui a été certifiée comme un recours collectif en vertu de la Loi de 1992 sur les recours collectifs;
- (h) has settled so that no further action need be taken.
elle a été réglée et elle ne nécessite plus aucune mesure.

Date: 13-JUL-2011

Fait le:

Mediation Office
Bureau de la médiation

Address of court office: Ottawa
Adresse du greffe: 161 Elgin St 2nd fl
Ottawa ON K2P 2K1

TO/À DENIS RANCOURT

THIS IS EXHIBIT “**BB**”

OF THE AFFIDAVIT

OF **Denis Rancourt**

SWORN BEFORE ME THIS **August 26, 2011**



Commissioner for Taking Affidavits

Mediation Assistance Project

Mediation is a process in which a neutral person, known as a mediator, facilitates negotiation among parties to a dispute. Mediation is an excellent opportunity to resolve a dispute in a manner decided by the parties themselves. PBLO is fortunate to have been approached by a number of mediators who are prepared to provide pro bono (free) mediation services. We view this as a very promising addition to our services and encourage you to participate.

The purpose of this form is to determine if you are interested and would like us to contact the other parties in your dispute to see if they are interested. If all parties are interested, we will try to find an available mediator.

Thank you for your cooperation in filling out this form.

BB

Name: DENIS RANCOURT Date: 25-AUG-2011

Title of proceedings or Court file number: 11-51657

Has your dispute been mediated?

☐ Yes

☒ No

Are you interested in pro bono (free) mediation?

☒ Yes

☐ No

☐ Maybe

If not, why not? _____

Would you like to learn more about mediation?

☒ Yes

☐ No

May we contact the other parties in the matter to convey your interest in mediation?

☒ Yes

☐ No

Do you authorize PBLO to complete and send the attached letter to the other parties?
(A template for this letter is on page 2, the reverse side of this document)

☐ Yes

☐ No

Signature

Denis Rancourt

DRAFT LETTER TO OTHER PARTIES

Dear Sir/Madam:

Re: [insert short title of proceedings/court file number]

As you may know, Pro Bono Law Ontario (PBLO) is a charity with a mandate to promote access to justice by providing opportunities for lawyers to do pro bono work. Law Help Ontario (LHO) is a project of PBLO that operates court-based help centres for low-income, self-represented litigants with civil, non-family matters in the Superior Court of Justice and Small Claims Court.

Currently, LHO's services include the provision of general legal information, form completion assistance, and brief summary advice from volunteer duty counsel. We have recently been approached by a number of mediators who have indicated a desire to provide pro bono services in matters involving one or more of our clients. We view this as an extremely promising expansion of our services.

[insert client name] has received assistance from LHO. [Mr./Ms. last name of client] has expressed to us an interest in pro bono mediation. The purpose of this letter is to convey that that interest to you and to determine whether [you/your client] is similarly interested. If so, we can make efforts to arrange mediation that would be conducted on a pro bono basis. We trust you appreciate that we cannot guarantee that we'll be able to do so. We do, however, encourage you to express an interest in these efforts.

In response to this letter, we would be grateful if you would send a short email message to mediator@pblo.org. The message need only indicate whether [you/your client] is or is not interested in having us try to arrange pro bono mediation in this matter. If you indicate an interest, you will not be committing to anything else. Thereafter, we and/or a proposed mediator will be in touch with further details.

Thank you for your assistance.

Pro Bono Law Ontario

BY EMAIL

August 1, 2014

Justice Michel Charbonneau
Ontario Superior Court of Justice
161 Elgin Street
Ottawa ON K2P 2K1

Your Honour:

Re: *St. Lewis v. Rancourt*
Court File No. 11-51657
Costs of the trial in the action

1. This is in response to Mr. Dearden's letter of today.
2. I reiterate my July 30, 2014 request to Your Honour that I be allowed a response about the July 18, 2014, cross-examination, and be given 10 days to prepare the document.
3. Mr. Dearden wants only one party to the action to be allowed to make submissions about the July 18, 2014, cross-examination. I respectfully suggest that this would be patently unfair.
4. The said July 18, 2014, cross-examination gave rise to:
 - (a) a cross-examination transcript of 106 pages;
 - (b) twenty seven (27) exhibits-at-cross-examination; and
 - (c) completions of answers to cross-examination questions, made by letter on July 20, 2014, which included a 28th exhibit that the plaintiff has had since 2011.
5. I respectfully submit that it is inconceivable that I would not be allowed to respond to Mr. Dearden's July 30, 2014, so-called "Reply" of 178-pages of interpretive and new legal arguments about the matters arising from the July 18, 2014 cross-examination.

Yours truly,



Dr. Denis Rancourt
(Defendant)
denis.rancourt@gmail.com

Cc: Richard Dearden, Counsel for the Plaintiff (by email)

BY EMAIL

August 20, 2014

Justice Michel Charbonneau
Ontario Superior Court of Justice
161 Elgin Street
Ottawa ON K2P 2K1

Your Honour:

Re: *St. Lewis v. Rancourt*
Court File No. 11-51657
Costs of the trial in the action

1. The matter of costs of the trial is before Your Honour.
2. It is not contested that the issue of my ability to pay costs is relevant to the matter of costs of the trial. (Otherwise, Mr. Dearden would not have cross-examined me at length about the said issue.)
3. Although a court transcript of the trial has not yet been produced, my notes -- which are supplemented by the official court voice-recording of the trial obtained from Court Services -- establish that, on June 6, 2014, Your Honour already made the following finding of fact in the oral Reasons, given in open court, for the permanent injunction Order dated and entered June 6, 2014:

At approximately 12:28 PM, on June 6, 2014, in the oral Reasons:

Justice Charbonneau: "[...] The possibilities of payment of the costs or the compensation or the award -- the costs or the award of damages -- that the defendant suggests are exist (sic) are frankly pure fantasy, there is no reasonable prospect he will be able to pay. Moreover, [...]"
[Emphasis added.]

4. The plaintiff does not agree that the issue has thus been finally determined, and chose to cross-examine me. I have requested in letters to Your Honour (dated July 30, 2014, and August 1, 2014) that I be allowed to make responding submissions to Mr. Dearden's July 30, 2014, new submissions about the said cross-examination.

5. Will Your Honour be making a decision about my requests to be allowed a response — made to the Court on July 30, 2014, and August 1, 2014 — soon? As I wish that the matter will not cause pressures regarding my preparation for the important “show cause” hearing that Your Honour has scheduled for September 25, 2014, nor regarding my perfecting of the now-filed appeal of the trial judgement.
6. I respectfully submit that it would be fundamentally unfair that I would not be allowed to respond to Mr. Dearden’s July 30, 2014, so-called “Reply” of 178-pages of interpretive and legal arguments about the new matters from the July 18, 2014 cross-examination.

Yours truly,



Dr. Denis Rancourt
(Defendant)
denis.rancourt@gmail.com

Cc: Richard Dearden, Counsel for the Plaintiff (by email)



montréal • ottawa • toronto • hamilton • waterloo region • calgary • vancouver • beijing • moscow • london

BY HAND

August 26, 2014

Richard G Dearden
Direct 613-786-0135
Direct Fax 613-788-3430
richard.dearden@gowlings.com

The Honourable Justice Michel Charbonneau
Ontario Superior Court of Justice
Ottawa Court House, 5th Floor
161 Elgin Street
Ottawa, ON K2P 2K1

Your Honour:

Re: St. Lewis v Rancourt
ONSC Court File No. 11-51657
ONCA Court File No. C59074

1. I write in response to Mr. Rancourt's letters dated August 25, 2014, (one addressed to you and cc'd to me; the other addressed to me and cc'd to you and the Registrar of the Court of Appeal). I copy this letter to the Registrar only because Mr. Rancourt has cc'd the Registrar on a letter to me.

Endorsement On Costs

2. Mr. Rancourt's letter to you makes numerous requests that you reconsider the content of your Endorsement On Costs dated August 21, 2014. Your Endorsement on Costs was final and not a draft sent to Mr. Rancourt for comment and submissions.

Abandonment of Defence of the Libel Action

3. Both of Mr. Rancourt's letters dated August 25th are attempts to create new evidence to support various issues in his appeal before the Court of Appeal. There is no dispute that at about 10:00 a.m. on May 16, 2014 (day #2 of Professor St. Lewis' examination in chief) Mr. Rancourt walked out of the trial of this action, voluntarily abandoned his defence of the libel action, and told the media your court was a "Kangaroo Court". Mr. Rancourt then proceeded to state additional false and prejudicial statements in the media and on-line while the jury trial continued in his absence. These were entered as "R" exhibits and attacked the reputation of Your Honour, the administration of justice and Professor St. Lewis in a malicious attempt to cause prejudice to the jury trial of Professor St. Lewis's libel action. Mr. Rancourt's disrespect for the judiciary and the administration of justice has no boundaries. For instance, in October of last year he published the enclosed article questioning whether the Court of

Appeal for Ontario refused to give Saudi Appellants their day in court because they are Saudi:

The claimants never had their day in court. We must ask the question: Is that because they are Saudi?

(<http://uofowatch.blogspot.ca/2013/10/saudi-doctors-lose-appeal-of-dismissal.html>)

4. Mr. Rancourt claims that he should have received copies of all trial exhibits and my submissions to Your Honour. It has always been my position that Mr. Rancourt abandoned his defence on May 16th as soon as he announced his refusal to participate in the trial and walked out of the court room. He did not return to the court room until June 5th after the jury informed the Court that it had reached a verdict and therefore was not entitled to receive copies of any exhibits or submissions filed by the Plaintiff during his absence. The Defendant voluntarily abandoned the trial and was not participating in the trial when exhibits and submissions were filed, and it does not lie in his mouth to complain about not receiving copies of exhibits and submissions.

Respondent's Certificate of Evidence

5. Mr. Rancourt's statement that the Respondent's Certificate Respecting Evidence dated July 21, 2014 agrees that all communications between the trial judge and counsel for the Plaintiff are part of the evidence is incorrect. Paragraph 3 of the Respondent's Certificate expressly states that the Respondent cannot propose the deletion of any materials listed in the Appellant's Certificate due to the number and breadth of the Appellant's grounds of appeal.

"R" Exhibits At Trial

6. Mr. Rancourt claims that exhibit "R2" is incomplete, and advises that he will include a video as part of the exhibit when he perfects his appeal. The statement that exhibit R-2 is incomplete is false.
7. Exhibit "R2" is a printout of the Defendant's partisan supporter Cynthia McKinney's petition "Give a Fair Court Hearing to Denis Rancourt" on Change.org. The video entitled "Hazel Gashoka Speaks Out on SAC and St. Lewis Reports" was never filed as part of Exhibit R-2 because the Gashoka video (posted by Mr. Rancourt on his website) is highly defamatory of Professor St. Lewis calling her a house negro.

Exhibits used in costs submissions and completed answers on cross-examination

8. Mr. Rancourt claims that Exhibit #16 to my cross-examination of him on his affidavit sworn July 18, 2014 is incomplete. This is false. Exhibit #16 consists of the August 25, 2011 Affidavit sworn by Denis Rancourt and only Exhibit "D" to that Affidavit. The remaining Exhibits to the August 25, 2011 Affidavit of Mr. Rancourt were never included as part of Exhibit #16, as they were unnecessary for the purposes of the Plaintiff's cross-examination of the Defendant with respect to his financial resources. The electronic copy of Exhibit #16 that

was sent to Mr. Rancourt following his cross-examination is identical to the original Exhibit #16 to the cross-examination.

July 20th Letter

9. Mr. Rancourt claims that I refused to file his completed answers to his July 18, 2014 cross-examination that he sent by letter dated July 20, 2014 after he was cross-examined. The Defendant cannot supplement the answers he gave under oath during his cross-examination by subsequently sending a letter to add to the record. The Defendant's July 20th letter is new evidence after he was cross-examined and he cannot add new evidence into the record after his cross-examination was completed.

Yours truly,



Richard G Dearden

RGD/AS
Enclosure

c.c.—Denis Rancourt

c.c.—Registrar of the Court of Appeal for Ontario

OTT_LAW\4588876\1



8+1

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U OF O WATCH

THIS SITE IS DEVOTED TO TRANSPARENCY AT THE UNIVERSITY OF OTTAWA, OTTAWA, CANADA. UOFOWATCH EXPOSES INSTITUTIONAL BEHAVIOUR THAT IS NOT CONSISTENT WITH THE PUBLIC GOOD.

U OF O WATCH MISSION, IN THE WORDS OF FOUCAULT...

"One knows ... that the university and in a general way, all teaching systems, which appear simply to disseminate knowledge, are made to maintain a certain social class in power; and to exclude the instruments of power of another social class. ... It seems to me that the real political task in a society such as ours is to criticise the workings of institutions, which appear to be both neutral and independent; to criticise and attack them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight against them." -- Foucault, debating Chomsky, 1971.

U OF O WATCH MISSION, IN THE WORDS OF SOCRATES...

"An education obtained with money is worse than no education at all." -- Socrates

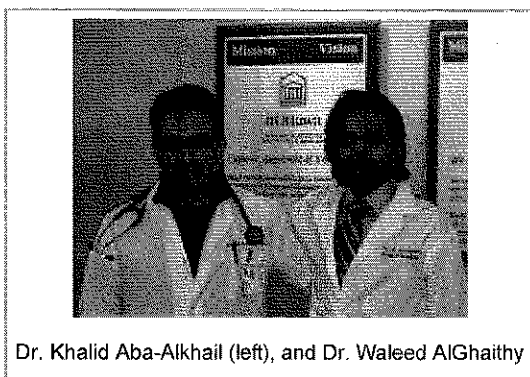
VIDEO OF PRESIDENT ALLAN ROCK AT WORK



DONATE TO THE DENIS RANCOURT LEGAL FUND

MONDAY, OCTOBER 21, 2013

Saudi doctors lose appeal of dismissal of University of Ottawa lawsuit -- media article, judgement, and commentary



Dr. Khalid Aba-Alkhalil (left), and Dr. Waleed AlGhaithy

The *Ottawa Citizen* has reported this short story: [HERE](#).

The actual Court of Appeal for Ontario judgement is [HERE](#).

Well there you have it. The claimants were simply never allowed to be heard in the Ontario courts regarding how they were treated by University of Ottawa administrators. Plain and simple denial of access to justice. Straight up. Is anybody paying attention?

The "Neuroleaks" emails constitute a textbook example of evidence

Donate



Denis Rancourt Legal Fund

TABARET HALL - U OF O



The central admin building in the fall.
Photo credit: University of Ottawa

U OF O PRESIDENT ALLAN
ROCK

for bad faith, of the type that should be written up in law school curricula, yet the "Neuroleaks" evidence was not known by the claimants until *after* all the internal University tribunals were done, yet the Ontario courts "found" (that's the legal term) that all the evidence was considered by the internal University tribunals... Both the Superior Court of Justice for Ontario and the Court of Appeal for Ontario "found" (by some process that defies reality) that all the evidence had already been considered by the internal University tribunals. No it had not. Just look at the documents filed with the courts, or the fact that a motion was won by the claimants in judicial review at the Divisional Court to introduce the new "Neuroleaks" evidence *after* the internal University tribunals were done, or all of this chronologically reported in the media, the same media that do not hiccup at this latest October 18, 2013 Court of Appeal judgement:

[13] Finally, the appellants argued that the trial judge erred in finding that they are relying on the same facts as in the discipline proceedings. They pointed to certain emails that they say were either not before the tribunals or not taken into account by them because there was nothing the tribunals could use them for. This position was disputed by the respondent.

To this observer, this means that the courts can and do make up the facts. In addition, the media and legal researchers clearly don't scrutinize the courts! What's the point of having a so-called open court principle in Canada if no one dares to scrutinize the darn courts? Incredible.

Well, **HERE**, again, is a copy of some of these "Neuroleaks" emails. Judge for yourselves. Read the six emails at that link. If your hair does not stand on end, then you are pathologically cynical. How the judges could have overlooked such administrative misbehaviour (that is putting it very politely) which ended the careers of a star neurosurgeon (weeks from being certified) and of two interns in cardiology, is, well, not what one expects in a free and democratic society.

The behaviour of the courts in Ontario, in this case, has the effect of condoning the egregious behaviours of administrators at the University of Ottawa, and it produces a striking denial of access to justice in which claimants, whose careers were ruined, are simply never heard on the full evidence and on the merits of their arguments.

The claimants never had their day in court. We must ask the question: Is that because they are Saudi?



[click image for updated posted list of ethical breaches of Allan Rock](#)

U OF O WATCH - CREATING
TRANSPARANCY



 **DENIS RANCOURT**

Email Denis Rancourt.
Dr. Denis G. Rancourt
is a former tenured and

Full Professor of

physics at the University of Ottawa, Canada. He is known for his applications of physics education research. He has published over 100 articles in leading scientific journals, and has written many social commentary essays. He is the author of the book *Hierarchy and Free Expression in the Fight Against Racism*. While he was at the University of Ottawa, he supported student activism and opposed the influence of the Israel lobby on that institution, which fired him for a false pretext in 2009.

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Ontariario!

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POSTED BY DENIS RANCOURT AT 8:43 PM

LABELS: COURT OF APPEAL FOR ONTARIO, KHALID ABA-
ALKHAIL, MANAL AL-SAIGH, NEUROLEAKS, WALEED AL-GHAITHY

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BY EMAIL

August 27, 2014

Justice Michel Charbonneau
Ontario Superior Court of Justice
161 Elgin Street
Ottawa ON K2P 2K1

Your Honour:

Re: *St. Lewis v. Rancourt*
Court File No. 11-51657

- **Endorsement On Costs of the trial, dated August 21, 2014**
- **Trial-exhibits and communications-with-court needed for appeal**

1. This is in response to Mr. Dearden's letter to Your Honour of August 26, 2014, which was in response *inter alia* to my letter to Your Honour of August 25, 2014.
2. I must correct errors in Mr. Dearden's letter, and I must ask that Your Honour direct Mr. Dearden to provide the communications and exhibits needed for the appeal.
3. My August 25, 2014, request is that Your Honour change the text of Your Honour's Endorsement On Costs dated August 21, 2014, to remove and fix several erroneous and unjust statements that I specifically described in my August 25, 2014, letter.
4. That is the first question, and Your Honour has the jurisdiction to make or not make the requested changes.
5. Mr. Dearden's tangential answers, *ad hominem* attacks, and responses to a separate letter to him demanding that he not continue to obstruct the administration of justice by refusing to simply send me copies of the trial-exhibits and trial-communications for the appeal, are not helpful, or relevant to the first question of the Endorsement text.

Incorrect statement of Mr. Dearden

6. Mr. Dearden incorrectly states "There is no dispute that ... Mr. Rancourt ... voluntarily abandoned his defence of the libel action."

7. Mr. Dearden fully knows the record and fully knows that the allegation that I abandoned my defence of the action is contested on appeal. Indeed, my Notice of Appeal dated July 4, 2014, expressly states (at paragraph-10):

At no time did the defendant abandon his defence or his party status.

8. Furthermore, Mr. Dearden knows that Your Honour's instruction to the jury, during the charge to the jury, that the jury was to not consider any defence is a central ground for appeal described in the said Notice of Appeal. Thus, it is difficult to understand how Mr. Dearden can baldly state "There is no dispute ...".

Mr. Dearden's new pretext for providing an incomplete exhibit R2

9. Mr. Dearden, in his letter, for the first time advances the pretext that he provided an incomplete exhibit R2 to the court "because the Gashoka video ... is highly defamatory of Professor St. Lewis". In-court, his story about the incomplete exhibit-R2 was different, as the official Court Services audio-recording of trial establishes, and Your Honour may recall.

Communications-during-trial and trial-exhibits needed for appeal

10. Mr. Dearden, in his letter, confirms that he will not provide his communications with Your Honour during trial. Therefore, I respectfully ask that Your Honour direct Mr. Dearden to provide me with all the said communications, which are needed for the appeal. These communications are not in the Registrar's file for the case.
11. Likewise, I respectfully request that Your Honour direct Mr. Dearden to send me the electronic copies of all the complete trial-exhibits. It is unreasonable and obstructionist for Mr. Dearden to refuse to do this simple action.

Yours truly,



Dr. Denis Rancourt
(Defendant)
denis.rancourt@gmail.com

Cc: Richard Dearden, Counsel for the Plaintiff (by email)



Denis Rancourt <denis.rancourt@gmail.com>

Justice Charbonneau

Johanson, Tina (JUD) <Tina.Johanson@ontario.ca>

28 August 2014 16:22

To: "richard.dearden@gowlings.com" <richard.dearden@gowlings.com>, "denis.rancourt@gmail.com"

<denis.rancourt@gmail.com>

Cc: "anastasia.semenova@gowlings.com" <anastasia.semenova@gowlings.com>

Good afternoon,

I am writing at the direction of Justice Charbonneau to advise you that His Honour now considers himself *functus* and that this matter is now in the hands of the Ontario Court of Appeal. As such, His Honour will not entertain a motion from either party to this matter.

Sincerely,

Tina Johanson

Trial Coordinator | Coordonnatrice du rôle

Criminal/Civil Division | divisions criminelles/civiles

Ontario Superior Court of Justice | Cour supérieure de justice de l'Ontario

Ministry of the Attorney General | Ministère du procureur général

161 Elgin Street, Room | Pièce 5300, Ottawa, Ontario, K2P 2K1

Tel. | tél. (613) 239-1585

Fax. | téléc. (613) 239-1324

Tina.Johanson@ontario.ca

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